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Street Law

A DETAILED LESSON PLAN ON CHILD ABUSE

OBJECTIVES:

- (1) familiarity with history of child abuse and neglect.
- (2) identify and define terms associated with child abuse and neglect.
- (3) understand circumstances and conditions where court intervention is warranted.
- (4) test knowledge of circumstances and conditions where court intervention is warranted.

A QUICK LOOK AT LAST YEAR:

In 1992, reports of child abuse and neglect in Oregon climbed to a record of over 25,000. Of these investigated reports, over 11,000 were found to be valid reports of child abuse or neglect and warranted court intervention.

A BRIEF HISTORICAL OVERVIEW:

1899 - First Juvenile Court established as completely separate judicial system for neglected and abused children, as well as delinquent children. Disassociated from rest of Juvenile System.

Early 1900's - All states begin to develop version of juvenile courts with juvenile codes and specific juvenile laws regarding child abuse and neglect.

1962 - The term "Battered Child Syndrome" is coined and gradually becomes widely accepted by courts of law as admissible evidence in child abuse cases.

1967 - In *Re Gault*, 387 U.S. 1, 87 S. Ct. 1428, (1967), held that juvenile courts had to comply with basic constitutional requirements for due process, but realized there might be a difference between adult and juvenile proceedings in the area of due process.

1970's - Child Abuse Reporting Laws, Rape Shield Statutes, "Battered Wife Syndrome".

Continued: Definitions

* Child Molestation - any sexually oriented act or practice by a parent, caretaker, or any other person which threatens or harms the child's physical, emotional, or social development.

NEGLECT - non-accidental failure or threatened failure of a caretaker to provide a child with the physical, medical, and emotional necessities for normal life, growth, and development. May include less onerous cases of physical abuse or moral and educational deprivation.

WHEN INTERVENTION IS WARRANTED - there is a minimum acceptable standard of parenting required for all parents to rise above. There is no clear definition of this standard. Factors to be considered are:

* Mental Competency - low intelligence and/or mental retardation are usually insufficient but mental illness may warrant interference.

* Religious Beliefs - faith healing and obscure cults, if injurious to child, can warrant intervention. For example, state intervened where parents belonged to cult of Melchizadek, and believed in no emotional attachments between parent and child and only children's physical needs were met.

* Emotional Nurturing -

(1) where failure to thrive syndrome in a child occurred because of lack of nurturing contact and appropriate external stimulation, state intervened.

(2) small children born of an emotionally neglectful relationship, shown no affection, and appeared withdrawn, passive, avoided eye contact, were non-verbal, and unaware of how to play with toys would appear to be emotionally neglected and warrant state intervention.

(3) the distinct risk of "psychological decomposition" where a child is rejected by his parents can warrant state intervention.

Continued: History of Child Abuse and Neglect

Early 1980 - Further innovations in law facilitating proving child abuse, particularly child sexual abuse, in the juvenile and criminal courts.

Mid 1980's - Increasing involvements of courts of domestic relations in area of child abuse, especially of child sexual abuse in custody hearings incident to separation or divorce.

Mid 1980's - Increasing involvement of civil courts in civil domestic suits brought by adults against their former caretaker(s), particularly those alleging sexual abuse of petitioners as children.

DEFINITIONS HELPFUL TO THE STUDY OF CHILD ABUSE

ABUSE - Non-accidental infliction or risk of infliction of physical, emotional, or mental harm to a child by a caretaker. Usually must cause severe damage to the child.

PHYSICAL ABUSE - includes beatings, burns, fractures, confinement, sexual misconduct, exploitation by overwork or for sexual reasons. Failure to provide food, shelter, clothing, and medical services. (Some exceptions here for religious treatment in lieu of traditional medical care).

EMOTIONAL ABUSE - includes acts or omissions by parents/caretakers that have caused or may cause, serious behavioral, cognitive, emotional, or mental disorders. Extreme or bizarre forms or punishment, such as torture or confinement of a child in a dark closet, are sufficient to warrant intervention.

* Abuse can also include moral or educational deprivation.

SEXUAL ABUSE - includes:

* exploitation or prostitution

* incest - marriage to or sexual intercourse with any ascendant or descendant, brother or sister, uncle or niece, aunt or nephew, with knowledge of their relationship.

* Rape - act of anal or vaginal sexual intercourse with a child. Although crime requires that the act be committed without consent, a child cannot give lawful consent to intercourse.

* Sexual Battery - touching of the anus or genitals of victim by the offender using any instrumentality on any part of the body.

Continued: Circumstances Warranting Court Intervention

* Protection of child's physical well-being - Courts in all states will intervene to protect children who have been physically abused. That rule has been extended in some states to include the fetus. Also:

(1) drug abuse by pregnant mothers has been found to be child abuse where fetus suffers adverse effect.

(2) use of drugs or alcohol by parent which puts child at risk of physical harm.

(3) failure of parent to provide adequate health care has been deemed to warrant intervention.

(4) excessive corporal punishment. Scalding in hot water, cigarette burns, welts caused by belts or other instruments used for discipline are examples found by the courts to constitute abuse.

(5) sexual misconduct with child. Obviously rape, molestation, incest, child pornography, and prostitution have been deemed to be abuse by the courts. Also, the failure of one parent to protect child from sexual abuse by other parent has been found to be abuse. Having sexual intercourse in presence of child can be abuse.

WHICH OF THE FOLLOWING REPORTS WARRANT COURT INTERVENTION:

Physical Abuse were investigation shows:

A.

- 1) 1yr old child has light bruising about the buttocks.
- 2) No prior referrals to CSD regarding this family.
- 3) Parents have no explanation for bruising.
- 4) Doctors exam inconclusive as to possible cause of bruises.

B.

- 1) Same facts as above, except:
- 2) CSD has 3 prior "unable to determine" physical abuse referrals on this family.
- 3) All prior referrals involve unexplained bruising about the body.

C.

- 1) 5yr old child has 2 small round burn marks on the legs.
- 2) Child states "Mommy burned me with her cigarette".
- 3) Mother states she accidentally burned the child while putting the child to bed the night before.
- 4) Mother has had 1 prior "founded" referral for Child Neglect because she tested positive for cocaine when the child was born.

D.

- 1) 12yr old child has light bruising about the face.
- 2) Child states that he and his mother got into a physical fight the night before and his mother hit him.
- 3) Mother states that she hit the child while trying to break up a fight between the child and his 9-yr old brother.
- 4) Mother had a bite mark on her abdomen from the 12 yr old biting her when she had him restrained in a head-lock.

E.

- 1) 13yr old girl reports that her father hit her on her back with a baseball bat.
- 2) There is no bruise.
- 3) The father states they had gotten into an argument over her skipping school, but swears he did not hit her with the bat. He does admit he did pick up the bat and threaten to hit her with it if she continued to scream obscenities at him. He states he has never and would never hit her.
- 4) There is no prior referral to CSD.

Testing your Knowledge.

F.

- 1) 2 & a 1/2 yr old child tells her mother that her "pee pee" hurts.
- 2) Child taken to hospital and physician observes slight redness in same area. After mother tells physician that the child just came back from a week-end visit with the father, the physician determines the redness could be from possible sexual abuse.
- 3) The father denies any contact with the girl's privates and believes the mother is setting him up so she can further limit his visitations with the child.

G.

- 1) 4 yr old boy discloses that older sister (age 11) touched his privates.
- 2) Older sister denies any touching of privates.
- 3) Parent does not believe 4 yr old. Parent is single, and works long hours using the 11 yr old to babysit.
- 4) Prior referrals from family involve neglect allegations 8 years ago in another state.
- 5) Single parent states that she is a survivor of child sex abuse.

H.

- 1) 13 & 14 yr old girls live with 26 yr old sister in a guardianship arrangement.
- 2) Guardian lives with 42-yr old Sex Offender who had one child by a 16-yr old foster child 6 years prior.
- 3) Both girls state they have been physically and sexually abused in the past while in the care of their mother.
- 4) Both girls deny any inappropriateness in their relationship with Sex Offender. They are both aware of his past and are not worried about him.

I.

- 1) There are 4 police reports covering a two-month period where 2 & 3 yr old children are playing in the street unsupervised. One report was at 10:30pm.
- 2) Mother and 4 children, ages 7,5,3,& 2, live in a federal housing project.
- 3) Mother admits that the children occasionally sneak out of the house but that a lot of younger children play in the street without an adult present in this complex.
- 4) There is one prior CSD referral where the mother was living with her children in her car and voluntarily placed her children in foster-care.

Continued: Testing your Knowledge.

J.

- 1) Mother and 3 children, ages 7, 3, & 1 live in a shelter.
- 2) Shelter reports that the family living are is a mess, the mother sleeps constantly and children are often found unsupervised.
- 3) Mother has had one prior CSD referral regarding a dirty home and failure to supervise.
- 4) Mother attempted suicide 3-months prior to this current referral.

DISCUSSION: TESTING YOUR KNOWLEDGE

Problem A.

Bruises alone on a young child are not conclusive for a finding of physical abuse. Often courts will look to prior history with CSD and/or a doctors examination for a report on the nature and possible causes of bruising. Without disclosures from the toddler, courts must look to external evidence to substantiate abuse.

Problem B.

With prior unexplained bruising, the court has more evidence than before. Note that in our juvenile court, abuse or neglect must be proven by a preponderance of the evidence, not clear and convincing evidence (as in termination of parental rights), or beyond a reasonable doubt (as in criminal cases). It is likely the court will intervene in this case, at least pending a thorough investigation by CSD.

Problem C.

Disclosure by child indicates abuse. Admittance by mother indicates an accidental cause. Depending on the severity of the burns and the appropriateness of the mother's response to the accident, the court may not intervene. The prior founded referral is unrelated to this allegation, but may have a bearing on the court deciding to intervene (i.e. did mother engage in drug treatment, was she successful, is she still involved in treatment, etc).

Problem D.

Court will likely intervene. Because the child sustained injuries in the fight due to the mother, the court would likely order services for the family such as family and individual counseling and a parenting class for the mother.

* Note: Juvenile courts do not have authority over adults. Only over juveniles. They can only recommend that the adults engage in services. Court's leverage is in where the child is placed if the parents do not comply with an order for services. Referees at the juvenile court order parents to comply with services all the time. Most parents do not realize that the referees do not have that authority.

Problem E.

The court would likely intervene based on the admission of the father that he threatened the child. Out of control teenagers do not justify threats with a baseball bat. Court would likely order family and individual counseling and parenting classes.

Problem F.

These are the toughest of cases. Custody problems are constantly a source of neglect and abuse allegations. Without a clear disclosure, sexual abuse cases are very difficult to prove, even by a preponderance of the evidence. Medical evidence is the next best source of evidence. This case would likely turn on the doctors' certainty that the redness was a result of sexual abuse.

Problem G.

Court would likely intervene. Inappropriate touching disclosures plus the denial of mother are likely sufficient to warrant intervention by the court. The fact that the mother was a victim of child sexual abuse is a strong red flag. Without intervention and treatment, sex abuse seems to pass on to the offspring of survivors as well.

Problem H.

Court would likely intervene. Without treatment, the sex offender poses a serious risk to the girls. With treatment, the sex offender still poses a risk but less of one than without treatment. The girls being victims in the past, are likely to be more vulnerable to the offender due to their past victimization.

Problem I.

Court would likely intervene. Inappropriate or lack of supervision constitutes child neglect. Where one police report might not warrant intervention by the court, four certainly do. The prior referral might be relevant in a positive way. Living out of a car is not positive, but making a temporary, safe plan for her children is. Neglect cases often deal with lack of resources or an inability to manage what resources you have. Mental health issues often are involved.

Page 9
Continued - Testing your knowledge

Problem J.

Court will likely intervene. All factors suggest possible mental health issues, possibly severe depression.

I. INTRODUCTION

The Child Abuse Reporting Law, ORS 418.740 to 418.775, was enacted in 1971 and provides for mandatory reporting and investigation of suspected child abuse and the provision of protective social services to abused and neglected children. The law was founded upon the legislative findings and policy expressed in ORS 418.745:



The Legislative Assembly finds that for the purpose of facilitating the use of protective social services to prevent further abuse, safeguard and enhance the welfare of abused children, and preserve family life when consistent with the protection of the child by stabilizing the family and improving parental capacity, it is necessary and in the public interest to require mandatory reports and investigations of abuse of children.

This policy statement reflects two of the basic, but sometimes conflicting, interests underlying child abuse investigations and protective services - that is, protecting abused children and preserving their family life.

The legal and administrative framework in Oregon within which child abuse investigations are carried out, and protective and remedial services are delivered to children and families, is based upon the recognition of several other fundamental, yet potentially conflicting, interests and public policies. These rights and interests are conditional in the respect that the welfare of the child is always the paramount concern. These include:

1. The constitutional rights of parents and children to be free from unreasonable invasion of their personal privacy by the state;
2. The constitutional rights of parents to raise their children in the way they choose;
3. The constitutional rights of parents and children to due process of law.

4. The legal and moral duty of parents to provide for their children's basic physical and emotional needs, and the children's rights to have those needs met; and

5. The state's interest in protecting its citizens from harm, preventing acts of abuse to children, prosecuting and punishing child abusers, and providing for the needs of the child victims and their families.

Children's Services Division has joint responsibility with law enforcement agencies to investigate suspected child abuse. ORS 418.760. CSD has primary responsibility for providing protective services to children and remedial services to their parents and families. ORS 184.805; 418.750(2). Other agencies and persons also are involved to some degree in protective services. They perform a variety of functions which are intended to promote and protect one or more of the competing policies and interests described, as follows:

1. Law enforcement agencies, including the State Police, county sheriffs, and local police departments, investigate child abuse reports, may take abused or neglected children into protective custody, and may assist in the criminal prosecution of child abusers.

2. The county juvenile departments and counselors also may assist in providing protective custody for abused and neglected children, may facilitate counseling for families, and may initiate and participate in juvenile court proceedings.

3. The county juvenile courts may acquire jurisdiction over children suspected of being abused or neglected and their families. The courts will determine whether a child should have been removed from, or should be returned to, parental custody and the validity of the allegations of abuse and neglect, may appoint attorneys for the parents and children, and may direct that protective and remedial services be provided to children and their families by CSD and the juvenile departments and may order parents to participate in educational or counseling programs reasonably directed toward improvement of parenting skills.

4. The county circuit courts exercise jurisdiction over parents and other persons accused of criminal offenses involving child abuse and neglect, may appoint attorneys for the accused persons, and determine the validity of the criminal charges.

The diversity of parties and interests involved in protective services investigations, and in court proceedings which may result from them, often creates conflicts. The legal and administrative framework for protective services, found primarily in the statutes in ORS Chapters 418 and 419, provides the mechanism for balancing those parties' interests and public policy so that the needs and best interests of the children will be served.



II. WHAT IS "CHILD ABUSE"?

The Child Abuse Reporting Law defines "abuse" as:

1. Any physical injury to a child caused by other than accidental means, including any injury which appears to be at variance with the explanation given for it;

2. Any mental injury to a child which shall include only observable and substantial impairment of the child's mental or psychological ability to function which was caused by cruelty to the individual child with due regard to the child's culture;

3. Sexual abuse including, but not limited to, rape, sodomy, sexual abuse, sexual penetration with a foreign object, and incest, as those acts are defined in ORS Chapter 163 dealing with criminal offenses against a person;

4. Sexual exploitation, including, but not limited to:

a. Contributing to the sexual delinquency of a minor, as defined in ORS Chapter 163, and any other conduct which allows, employs, authorizes, permits, induces, or encourages a child to engage in performing for the observation of people or the photographing, filming, tape recording, or other exhibition which depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.570, or sexual abuse involving a child; and

b. Allowing, permitting, encouraging, or hiring a child to engage in prostitution as defined in ORS Chapter 167 dealing with criminal public health and decency offenses.

5. Maltreatment or negligent treatment of a child, which would include but is not limited to, the failure to provide adequate food, clothing, shelter, or medical care. However, any child who is under care or treatment solely by spiritual means shall not for this reason alone be subject to this section; and

What Is Child Abuse?

6. A threatened harm to a child which subjects the child to substantial risk of harm to the child's health or welfare. ORS 418.740(1).

A physical injury to a child, no matter how serious, is not "abuse" if it was "accidental." An "accidental" injury is one which was neither intended nor reasonably foreseeable. See 40 Op Atty Gen 381 (1980) (interpreting "patient abuse" under ORS 441.630). Even if the injury is explained by the parent or other responsible person as accidental, if that explanation appears to be inconsistent with the injury, it nevertheless may constitute abuse.

"Sexual exploitation" does not include any conduct which is part of an investigation conducted pursuant to a Children's Services Division worker or a law enforcement officer's duty to investigate a report of child abuse under ORS 418.760. ORS 418.740(1)(d)(A). The definition of "sexual exploitation" also does not include any conduct which is designed to serve an educational or other legitimate purpose. ORS 418.740(1)(d)(A).

"Neglect" can consist of either intentional or careless failure to provide necessary care or treatment. See 40 Op Atty Gen 381 (1980). However, any child who is under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the child or the child's parent or guardian, is not automatically subject to this abuse definition. 418.740(1)(e). Nevertheless, even if faith healing is not "neglect" within the definition of reportable "abuse," the juvenile court may exercise jurisdiction over, and intervene on behalf of, a child being so treated if the child's condition and circumstances endanger the child's welfare. ORS 419.500(1); State ex rel Juv. Dept. v. Jensen, 54 Or App 1, 633 P2d 1302, rev den (1981) (Oregon Court of Appeals held that the juvenile court could intervene where the child's health and well being was seriously jeopardized by the parent's refusal on religious grounds to secure necessary medical treatment).

Although CSD, law enforcement agencies, and persons who have a statutory duty to report suspected child abuse must determine whether there is "reasonable cause to believe" that a child has been subjected to "abuse" as defined and interpreted under ORS 418.740, ultimately the determination of whether a child has been abused is one for the juvenile court to determine by a "preponderance of the evidence" or the criminal courts to determine "beyond a reasonable doubt." Children's Services Division has a valid child abuse report if they have "reasonable cause to believe" that the child has been harmed by abuse or neglect, or is at substantial risk of being harmed by abuse or neglect. (See discussion on page 14).